IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO.128 OF 2006

Sau.Tejaswini Umesh Wankhede ...Applicant

Versus

Shri Umesh Madhukar Wankhede ...Respondent

Shri Vijay S. Kokitkar for the Applicant.
Shri M.S.Karnik for the Respondent.

CORAM : ABHAY S.OKA, J.
DATED : APRIL 25, 2007.

JUDGMENT:

1. Heard Advocate appearing for the Applicant and the Advocate appearing for the Respondent. The Application is taken up for hearing as it is reported that there is no possibility of amicable settlement.

2. The Applicant-wife is a resident of Kalyan in District Thane and the Respondent is a resident of Nasik. The prayer in this Application is for transfer of a matrimonial Petition filed by the Respondent under the provisions of Hindu Marriage Act, 1955 in the Court of Civil Judge, Senior Division at Nasik. The transfer is sought on the ground of convenience of the Applicant. In paragraph No.18 of the Application, the Applicant has stated thus:

"The Applicant states and submits that, the

Applicant is staying at Kalyan with her parents. The applicant is unemployed and has no source of income to maintain herself and her daughter. There is no body to look after the two years old daughter Gouri and take her care. The father of the Applicant is also suffering from blood pressure and hyper tension therefore unable to accompanied the Applicant every date. On the contrary the Respondent is Builder by profession and having sufficient income and able to attend the Court to fight out the matter at Kalyan. There being no other alternative the Applicant is residing with her aged parents and hence on account of circumstances mentioned below the Applicant is not in a position to attend the Court of Civil Judges Senior Division Nasik".

3. Affidavit in reply has been filed. In affidavit in reply it is pointed out that there was an amicable settlement between the parties as evidenced by a document at Exhibit R-1 which is signed by the Applicant herself. it is submitted that as the Applicant backed out, the Respondent was forced to file the Petition in the Court at Nasik. The learned Advocate for the Respondent submitted that an Application has been made

by the Applicant in the Court at Nasik for grant of travelling expenses and therefore, no ground is made out for transfer.

4. I have considered the submissions. The Applicant has stated that she is residing with her parents at Kalyan and she has to look after two year old daughter. Considering what is stated in paragraph No.18 of the Application, a case for passing an order of transfer is made out. If the learned Civil Judge Senior Division at Nasik has already passed an order on the Application made by the Applicant directing the Respondent to pay her travelling expenses, in view of the order passed in this Application, the Applicant will not be entitled to enforce the said order.

5. Hence, I pass the following order:

(i) The Hindu Marriage Petition No.489 of 2006 pending in the Court of the learned Civil Judge, Senior Division at Nasik is transferred to the Court of the learned Civil Judge, Senior Division at Kalyan, District Thane.

(ii) The learned trial Judge will issue notice to both the parties of the date fixed in the

Petition.

(iii) If an order is already passed by the learned Civil Judge, Senior Division at Nasik directing the Respondent to pay travelling expenses to the Applicant, the said order shall not be acted upon by both the parties.

(iv) No order as to costs.

JUDGE